उच्च न्यायालय, छत्तीसगढ, बिलासपुर

आदेश पत्रक

मामला क्रमांक ..... सन् 200

..... विरुद्ध .....

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

HIGH COURT OF CHHATTISGARH AT BILASPUR

CRIMINAL APPEAL NO. 435/2006

Appellant — **Salim @ Sanjay** S/o Ashik Shaikh Musalman aged -22 years, R/o. Ukai Pat P.S. Sanna, Distt-Jashpur Nagar, C.G.

VERSUS

Respondent — State of C.G.

Present:
Shri Abhay Tiwari, Advocate for the appellant.
Shri M.P.S. Bhatia, P.L. for the State.

ORAL JUDGMENT
(13th September 2007)

Dhirendra Mishra, J

This appeal is directed against the judgment of conviction and order of sentence dated 22.4.2006 passed in S.T.No. 257/05 whereby learned III Additional Sessions Judge, Ambikapur, Surguja has convicted the appellant under Sections 366, 344, 346 of the IPC and sentenced him to undergo 7 years' R.I. & pay a fine of Rs. 500/-, 1 year's R.I. & pay a fine of Rs.100/-, 1 year's R.I. & pay a fine of Rs.100/- respectively and in default of payment of fine to undergo

उच्च न्यायालय, छत्तीसगढ. बिलासपुर

(56)

आदेश पत्रक

मामला क्रमांक ..... सन् 200

..... विरुद्ध .....

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित 2	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

additional S.I. for 1 month, 10 days and 10 days, respectively. All the sentences have been directed to run concurrently.

2. Case of the prosecution, in brief, is that Mohd. Suleman Khan (PW-2) lodged a report in Police Station – Kusmi on 2.3.2004 at about 6.40 a.m. mentioning therein that at about 12.00 mid night on 1.3.2004 he was asleep in his house with his family, he heard knock at his door, they did not open the door and when the persons knocking at the door threatened that they shall set their house ablaze, the door was opened by his wife Zahida. They took the prosecutrix, daughter of the complainant, at gunpoint in their martial jeep. They were eight in number including the present appellant, Taslim-brother-in-law of the appellant and Tempo-brother of the appellant. It is also mentioned in the report that before knocking the door, houses of all the neighbourers were bolted from outside. The complainant could not identify other co-accused persons because of darkness. During investigation the vehicle involved in the offence was seized on 2nd March 2004 itself vide seizure memo of Ex.P/8. On the information of father of the prosecutrix, she was recovered from Delhi vide recovery memo of Ex.P/6. The prosecutrix was sent for medical examination to Community Health Center, Shankargarh where Dr. Smt. J. Lakda (PW-7) examined her and gave her report of Ex.P/14.

उच्च न्यायालय, छत्तीसगढ, बिलासपुर

आदेश पत्रक

मामला क्रमांक ..... सन् 200

..... विरुद्ध .....

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित 3	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

3. After completing investigation charge sheet was filed in the Court of Judicial Magistrate First Class, Ambikapur. During trial the prosecution examined seven witnesses. Thereafter, statement of the accused was recorded under Section 313 of the Cr.P.C. in which he denied the circumstances appearing against him in the prosecution case and pleaded innocence and false implication.

4. Learned trial Court after hearing counsel for the respective parties convicted and sentenced the accused/appellant as mentioned above

5. Learned counsel for the appellant submits that in fact negotiation of marriage of the prosecutrix with co-accused Taslim was going on and in the Madarsa the parties had agreed for the marriage and accordingly, father of the prosecutrix had put his signature in the register. On the date of incident also the prosecutrix accompanied the accused persons voluntarily, visited several places and thereafter she joined a job at Delhi and at no point of time she made any effort to return to her parental home or lodge a report in the police station. Thus, conduct of the prosecutrix clearly shows that she was a consenting party and was not in fact abducted.

6. On the other hand, Shri Bhatia, learned counsel appearing for the State/respondent supported impugned

उच्च न्यायालय, छत्तीसगढ, बिलासपुर

आदेश पत्रक

मामला क्रमांक ..... सन् 200

..... विरुद्ध .....

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित ५	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

judgment of the trial Court and submitted that there is a clear allegation that accused persons went to the house of the complainant at 12.00 in the mid night, before knocking door of the complainant they bolted doors of the neighbourers as a precautionary measure so that they should not come to rescue the complainant. Thereafter, the complainant was forced to open the door under the threat and the prosecutrix was abducted on the gunpoint. The allegation against the present appellant has been clearly established from statement of the prosecutrix who has stated that she was abducted from her house by the appellant and seven others, she was taken forcibly in a jeep and kept in confinement under threat at Delhi and thereafter she could be rescued only with the help of the police as she communicated about her abduction and address through a co-worker.

7. I have heard learned counsel for the parties and perused the material available on record including the impugned judgment.

8. PW-1 prosecutrix has stated that on the date of incident it was 12.00 mid night they heard knock at their door, they did not open the door, however, when the accused persons threatened that they will set the house on fire, the door was opened by her mother. Thereafter, the accused persons on the threat of gunpoint asked about her father and when she went

उच्च न्यायालय, छत्तीसगढ. बिलासपुर

आदेश पत्रक

(57)

मामला क्रमांक ..... सन् 200

..... विरुद्ध .....

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

with a glass of water for driver of the jeep, accused Taslim on the threat of life asked her to accompany him to his house and dragged her from her house and took in a jeep per force. They pushed her father away and thereafter took her to the house of appellant in village Kevai. She was kept in confinement in Delhi in the house of appellant. She narrated the incident to one boy working with her in Delhi, who informed her parents about her confinement. However, she has admitted that present appellant did not commit rape with her.

9. PW-2 Suleman Khan has also supported version of the prosecutrix and stated that accused persons abducted his daughter at about 12.00 in the night on gunpoint and after he learned that her daughter is confined in Delhi, he informed about the same to the police and thereafter her daughter was rescued from the confinement and report was lodged. PW-6 Abul Khan who is neighbour of the complainant has also stated that on the date of incident at 12.00 in the night he heard the shouts of parents of the prosecutrix. However, when he tried to come out of his house, he found his house bolted from outside and door of his house was opened by parents of the prosecutrix. When he came out of his house, he saw the jeep leaving the place.

10. So far as argument of learned counsel for the appellant that the prosecutrix and other family members did not raise an

उच्च न्यायालय, छत्तीसगढ, बिलासपुर

60

आदेश पत्रक

मामला क्रमांक ..... सन् 200

..... विरुद्ध .....

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित 6	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

alarm while prosecutrix was being abducted, is concerned, the same stands belied by the statement of PW-6 Abul Khan who has categorically stated that he heard the shouts raised by parents of the prosecutrix. The version of the complainant as also the prosecutrix is also corroborated by his statement that the accused persons had bolted the doors of neighbourers from outside.

11. So far as conduct of the prosecutrix that she did not try to flee from Delhi where she was permitted to work as a domestic help in Koti, is concerned, considering the fact that the prosecutrix is resident of a remote place, she was taken to Delhi under the gunpoint and confined in the house of the appellant, it seem to be improbable to expect that she would have lodged a report to the police independently. However, as soon as she had an opportunity of communicating about her confinement to her parents, she did so and only after her communication she was rescued with the help of the police.

12. Placing reliance on the judgment in the matter of **Jinish Lal Sah Vs. State of Bihar** reported in **2003 L.T.(SC) 1**, learned counsel for the appellant argued that where the evidence available on record shows that prosecutrix was a consenting party, the accused persons cannot be convicted under Sections 366 and 376 of the IPC unless the prosecution is able to prove that she was below the age of 18 years.

उच्च न्यायालय, छत्तीसगढ, बिलासपुर

(61)

आदेश पत्रक

मामला क्रमांक ..... सन् 200

..... विरुद्ध .....

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

13. In the above cited case, the prosecutrix was examined as PW-1 and the Hon'ble Apex Court on the basis of evidence available in that case, held that the prosecutrix was a consenting party who was above 18 years of age on the date of incident and therefore, set aside conviction under Sections 366 and 376 of the IPC.

14. However, in the present case, it has been proved beyond reasonable doubt that the prosecutrix was abducted by the appellant and his associates on the date of incident and it has also been proved that after abducting her, she was taken to Delhi from where she could be rescued only with the help of the police when she somehow communicated about her confinement to her parents. Therefore, the case in hand is distinguishable on facts from the case cited by learned counsel for the appellant and the same is of no help to the appellant.

15. Thus, on the basis of aforesaid discussion, it is established that the appellant was involved in the commission of the above offence and the trial Court has not committed any illegality or infirmity in convicting and sentencing the appellant by the impugned judgment.

16. Learned counsel for the appellant further submitted that taking into consideration the facts and circumstances of the

उच्च न्यायालय, छत्तीसगढ, बिलासपुर

आदेश पत्रक

(62)

मामला क्रमांक ..... सन् 200

..... विरुद्ध .....

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित ९	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

case as also age of the appellant, he may be awarded lesser jail sentence.

17. In the result, the appeal partly succeeds. Conviction of the appellant under Sections 366, 344 and 346 is maintained. Jail sentence of seven years' R.I. is reduced to R.I. for five years. Fine sentence imposed on the appellant by the trial Court shall remain as it is.

Sd/-
DHIRENDRA MISHRA
Judge

पोस्ट